

ALFREDO M. VELAYO, ETC., PLAINTIFF VS. SHELL COMPANY OF THE PHILIPPINES ISLANDS, LTD., DEFENDANT AND APPELLEE. ALFONSO Z. SYCIP, ET. AL., INTERVENORS AND APPELLANTS.

G.R. No. L-8883. July 14, 1959

Ponente: BAUTISTA ANGELO, J.

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BAUTISTA ANGELO, J.:

On December 17, 1948, Alfredo M. Velayo as assignees of the insolvent Commercial Airlines, Inc., instituted an action against Shell Company of the Philippine Islands, Ltd., in the Court of First Instance of Manila for injunction and 'damages (Civil Case No. 6966). On October 26, 1951, a complaint in intervention was filed by Alfonso Sycip, Paul Sycip, and Yek Trading Corporation, and on November 14, 1951, by Mabasa & Company.

After trial wherein plaintiff presented evidence in his behalf, but none in behalf of intervenors, the Court rendered decision dismissing plaintiff's complaint as well as those filed by the intervenors. On March 31, 1954, counsel for plaintiff filed a notice of appeal, appeal bond, and record on appeal in behalf only of plaintiff even if they also represent the intervenors, which in due time were approved, the Court instructing its clerk to forward the record on appeal to the Supreme Court together with all the evidence presented in the case. This instruction was actually complied with.

On August 31, 1954, the Deputy Clerk of the Supreme Court notified counsel of plaintiff that the record as well as the evidence have already been received and that they should file their brief within 45 days from receipt of the notice. On November 2, 1954, counsel filed their brief for appellants. On November 6, 1954, or 7 months after the judgment had become final as against the intervenors, and 4 days after counsel for appellants had submitted the latter's brief, counsel for intervenors filed with the Supreme Court a petition for correction of the record on appeal in order to enable them to insert therein the names of the intervenors as appellants, the petition being based, among others, on the ground that the omission of the names of the intervenors in said record on appeal was due to the mistake of the typist who prepared it while the attorney in charge was on vacation. The petition was vigorously opposed by counsel for defendant, contending that the same would serve no purpose, whatsoever considering that the intervenors had not presented any evidence in support of their claim, aside from the fact that the alleged absence of the attorney of the intervenors cannot constitute a justification for the alleged omission of the intervenors as appellants. On November 12, 1954, the Court denied the petition. Counsel for intervenors moved for a reconsideration of the order, but the same was denied.

On November 19, 1954, counsel for intervenors filed with the lower court a petition for relief under Rule 38 of the Rules of Court, wherein he reiterated the same grounds they alleged in the petition for correction filed by them in the Supreme Court, which petition was denied on November 27, 1954, for having been filed outside the reglementary period fixed in said Rule 38. Counsel filed a motion for reconsideration, which was again denied, the Court stating that "no judgment or order has been rendered, nor any other proceeding taken by this Court on the right of the intervenors to appeal."

On December 20, 1954, counsel filed once more a motion to amend the record on appeal based on grounds identical with those alleged in the petition for correction filed before the Supreme Court. On December 27, 1954, the lower court denied the motion. On January 6, 1955, counsel filed a petition for relief from this last order entered on December 27, 1954, to which counsel for defendant filed an opposition. On February 5, 1955, hearing was had on both the petition for relief and the opposition, and on February 9, 1955, the petition was denied on the ground that the case is already before the Supreme Court on appeal. It is from this order that counsel for intervenors has taken the appeal now before us.

The instant appeal has no merit.

To begin with, the only remedy which appellants now seek in this appeal is the inclusion of the intervenors as appellants in the appeal from the decision rendered in the main case, but this remedy has already been denied twice by this Court, first, in its resolution of November 12, 1954 denying their petition for correction of the record on appeal, and, second, in denying their motion for reconsideration of said resolution. It should be noted that the grounds relied upon in this appeal are the same grounds alleged in said petition for correction.

In the second place, the intervenors have no right or reason to appeal from the decision in the main case, it appearing that they did not introduce any evidence during the trial in support of their complaint, which shows that their appeal would be merely pro-forma. And, in any event, they made the attempt to amend the record on appeal seven (7) months after the decision had become final against them.

In the third place, the intervenors have no right or reason to file a petition for relief under Rule 38 of the Rules of Court from the order of the lower court issued on December 27, 1954, for the reason that the same was entered upon a motion filed by them. Indeed they cannot reasonably assert that the order was entered against them through fraud, accident, mistake, or negligence. The fraud mentioned in Rule 38 is the fraud committed by the adverse party and certainly the same cannot be attributed to the Court.

Finally, it appears that the main case has already been decided by this Court on the merits on October 31, 1956, reversing the decision of the lower court and awarding damages to plaintiff, which apparently is the very purpose which the intervenors seek to accomplish in joining the appeal as co-appellants. This appeal, therefore, has already become moot.

Wherefore, the order appealed from is affirmed, with costs against appellants.

Paras, C. J., Bengzon, Padilla, Montemayor, Labrador, Concepcion, Endencia and Barrera, JJ., concur.

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